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IN THE

Supreme Court of the United States

OCTOBER TERM, [redacted] 1958

No. [redacted] 41

THE NEW YORK CENTRAL RAILROAD COMPANY,
Appellant,

v.

BOARD OF PUBLIC UTILITY COMMISSIONERS OF THE STATE OF NEW JERSEY, ET AL., *Appellees.*

On Appeal From the United States District Court for the District of New Jersey

For the Board of Public Utility Commissioners of the State of New Jersey and the State of New Jersey

DAVID D. FURMAN
Acting Attorney General of the State of New Jersey

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Special Counsel

For Bergen County, New Jersey, Rockland County, New York, the New Jersey municipalities of Bergenfield, Bogota, Dumont, Harrington Park, Haworth, Norwood, Ridgefield Park, Teaneck and Weehawken, and the Citizens United Transit Committee, an unincorporated association

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PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1957

No. 838

THE NEW YORK CENTRAL RAILROAD COMPANY,
Appellant,

v.

BOARD OF PUBLIC UTILITY COMMISSIONERS OF THE STATE OF NEW JERSEY, ET AL., *Appellees.*

On Appeal From the United States District Court for the District of New Jersey

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MOTION TO STRIKE

Pursuant to Rule 35 of the Revised Rules of this Court, the Appellees noted in the margin* move that

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* Board of Public Utility Commissioners of the State of New Jersey, The State of New Jersey, Bergen County, New Jersey, Rockland County, New York, The New Jersey Municipalities of Bergenfield, Bogota, Dumont, Harrington Park, Haworth, Norwood, Ridgefield Park, Teaneck and Weehawken, and the Citizens United Transit Committee, an unincorporated association.

the memorandum entitled "Memorandum for Appellees United States and Interstate Commerce Commission in Support of Statements as to Jurisdiction", submitted by the United States and the Interstate Commerce Commission for consideration by the Court in the above-entitled case and in Erie Railroad Company, Appellant, v. Board of Public Utility Commissioners of the State of New Jersey, et al., Appellees, No. 918, be stricken from the record in this case.

The reasons for this Motion are the following:

1. The United States and the Interstate Commerce Commission failed to make timely application for review of the judgment of the Court below.

2. The Rules of this Court make no provision for the filing as appellees of memoranda in support of the statements of appellants.

3. Acceptance of the above-mentioned memorandum for consideration by the Court would be inconsistent with the settled practice of the Court in that:

a. The said memorandum submitted as for appellees presents arguments against the correctness of the judgment of the District Court under consideration.

b. This Court said in Federal Trade Commission v. Pacific States Trade Association, 273 U. S. 52, 66: "A party who has not sought review by appeal or writ of error will not be heard to question the decree of the lower court. This is so well settled that citation is not necessary."

4. No action has been taken by this Court to consolidate the separate appeal in Erie Railroad Company,

Appellant v. Board of Public Utility Commissioners of the State of New Jersey, et al., Appellees, No. 918.

Respectfully submitted,

For the Board of Public Utility Commissioners of the State of New Jersey and the State of New Jersey

DAVID D. FURMAN
Acting Attorney General of the State of New Jersey

WILLIAM A. ROBERTS
Special Counsel

For Bergen County, New Jersey, Rockland County, New York, the New Jersey municipalities of Bergenfield, Bogota, Dumont, Harrington Park, Haworth, Norwood, Ridgefield Park, Teaneck and Weehawken, and the Citizens United Transit Committee, an unincorporated association

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CERTIFICATE OF SERVICE

I, William A. Roberts, a member of the bar of this Court and one of counsel for Board of Public Utility Commissioners of the State of New Jersey, The State of New Jersey, Bergen County, New Jersey, Rockland County, New York, The New Jersey Municipalities of Bergenfield, Bogota, Dumont, Harrington Park, Haworth, Norwood, Ridgefield Park, Teaneck and Weehawken, and the Citizens United Transit Committee, an unincorporated association, appellees in the above-entitled case, hereby certify that, on the 14th day of May I served the said Appellees' Motion to Strike on the appellant by mailing copies, in duly addressed envelopes, with first class postage prepaid, to its counsel of record, Thomas E. Dewey, Esq., 40 Wall Street, New York 5, N. Y., and Gerald E. Dwyer, Esq., 466 Lexington Avenue, New York 17, N. Y., and that, on the same day, I served the said Motion on the United States and the Interstate Commerce Commission, respectively, by mailing copies in duly addressed envelopes, with first class postage prepaid, to the Solicitor General, Department of Justice, Washington 25, D. C., and the Interstate Commerce Commission, for the attention of Robert Ginnane, Esquire, Chief Counsel, Washington 25, D. C.

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